

Congress of the United States
Washington, DC 20515

June 6, 2019

Mr. Mark Morgan
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5003
Washington, DC 20536-5003

Dear Acting Director Morgan:

On June 6, the Government Accountability Office (GAO) released a report in direct response to a request initiated by our offices, entitled “*Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans.*” The purpose of the report was to ascertain the scope of service member and veteran deportations, as well as to determine existing Department of Homeland Security (DHS) policies and adherence to those policies. We were deeply alarmed by the findings in the report that show not only are we unable to fully quantify how many of these men and women are being deported, but that Immigration and Customs Enforcement (ICE) has certain policies already in place to which it consistently fails to adhere.

In 2015, ICE adopted a directive establishing procedures for investigating the potential U.S. citizenship of individuals encountered by ICE, which requires elevating cases involving veterans or other potential U.S. citizens to headquarters. The GAO analysis found ICE failed to meet the requirements under this policy in a staggering 70 percent of cases between 2013 and 2018. Elevating a case would allow for adequate review of a potentially removable veteran before removal proceedings have begun. The need to elevate these cases is imperative, with consequences stretching far and wide. Failure to raise these cases to headquarters only results in more removal order proceedings for individuals whom have bravely served our nation.

GAO’s analysis not only determined ICE did not elevate these cases, but also highlighted personnel were wholly unaware the policy even existed. Absent clear guidance, personnel are unable to decipher best practices for cases involving veterans. All appropriate personnel should be thoroughly informed and updated on agency policy. Furthermore, clear guidance and training must be provided to ensure consistent implementation of these policies.

ICE has also established policies to mandate the handling of cases of potentially removable veterans, yet consistently fails to practice such policies. A 2004 memo issued by ICE’s Acting Director gave ERO Field Office Directors (FOD) authority to issue a notice to appear (NTA) to a veteran. This NTA document requiring an appearance before a judge should only be issued once a review is completed. The FOD must consider several factors pertinent to the veteran in question. For an NTA to be issued, the FOD must consider the potentially removable veteran’s criminal background, health, family ties and service. This crucial stage of the review process is imperative to adequately determine whether a veteran should be placed into removal proceedings. Policy also further dictates a FOD must complete a memo, place it in the veteran’s file and subsequently upload the file into the ICE database. Failed execution of these protocols is directly correlated with the removal of veterans.

ICE policies dictate the decision to issue an NTA to a veteran must be documented, yet policy does not require personnel to identify or document veteran status during interviews. From 2013 to 2018, ICE did not follow a 2004 requirement for FOD approval. In roughly 21 percent of cases, the Office of the Principal Legal Advisor's (OPLA) check box highlighted involved removed veterans, and those veterans were placed into removal proceedings. The simple step of noting veteran status is imperative to ensure adequate consideration of the potentially removable individual.

A common misconception is that all veterans self-identify and declare their veteran status during interviews with agency officials, however that is simply not the case. The vast majority of veterans are led to believe their status has already been identified, documented and placed into their respective files. Absent proper enforcement protocol, veterans whom have dutifully served our country are being deported. This systematic failure to our veterans must be addressed.

The GAO report highlights several breakdowns that have systematically occurred at every level when a potentially removable veteran is involved. When a potentially removable veteran is encountered, policies require additional assessments, reviews, documentation and proper management be conducted. ICE has a responsibility to ensure that its internal policies are being fully executed and that its staff are educated on these existing policies. As such, I respectfully request that you answer the following questions:

1. What steps will ICE take to ensure full adoption and compliance with the 2015 ICE Directive 16001.2 and the 2004 memo issued by Acting Director Victor Cerda to standardize the reporting requirements for potentially removable individuals?
2. Does ICE have any existing plans or plans currently in development to strengthen its internal requirements to document the veteran status or service history of potentially removable individuals?
3. What additional training will be adopted in response to GAO's findings that ICE personnel do not consistently adhere to its own policies on the handling of potentially removable individuals who are veterans?
4. What additional processes or procedures will be adopted to ensure that ICE can accurately inventory the total number of veterans current in removal proceedings and identify new potentially removable veterans?
What additional authorities may be necessary to satisfy the recommendations in the GAO report?

We appreciate your time and attention to this matter. We look forward to your timely response.

Sincerely,



MARK TAKANO
Member of Congress



JUAN VARGAS
Member of Congress